

The Honorable Benjamin H. Settle

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RAMONA MCCLINTOCK,

Plaintiff.

v.

UNITED STATES OF AMERICA;
CATHLEEN JENSEN and JOHN DOE
JENSEN,

Defendants.

CASE No. 3:19-cv-05835-BHS

STIPULATED MOTION TO AMEND
COMPLAINT TO ADD DEFENDANT AND
ORDER

NOTED FOR CONSIDERATION:
July 10, 2020

COMES NOW, Plaintiff, by and through her counsel, and the Defendant United States of America, by and through their counsel, pursuant to Local Rule 10(g), and hereby jointly stipulate and move to amend Plaintiff's complaint for damages to add a party, the estate for Cathleen Jensen. The parties seek to add the estate of Cathleen Jensen as Ms. Jensen as an involved party in the subject collision that forms the subject of this case. Ms. Jensen, a former co-defendant has subsequently passed away and was not alive at the time that plaintiff served her through the Washington State Secretary of State. The parties seek to properly name and include the correct party in these proceedings.

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1 The parties have consulted on this matter, including the counsel representing Ms. Jensen's
2 estate, and all parties agree to amending the complaint to name the estate of Cathleen Jensen as a
3 co-defendant in the Plaintiff's November 30, 2017 motor vehicle collision.

4 The Plaintiff may amend her complaint with the opposing party's written consent. Fed. R.
5 Civ. P 15. Leave to amend pleading should be freely given and should be denied only where
6 amendment would be futile, where it is sought in bad faith, or where it would prejudice opposing
7 party. *See AIU Ins. Co. v. Mitsui O.S.K. Lines, Ltd.*, 897 F. Supp. 724, 726 (S.D.N.Y. 1995). Rule
8 governing leave to amend does not prescribe any time limit within which a party may apply to
9 the district court for such leave, and thus, generally, delay alone is not a sufficient reason for
10 denying leave to amend, if no prejudice to the non-moving party is found. *Triad at Jeffersonville*
11 *I, LLC v. Leavitt*, 563 F. Supp. 2d 1, 11 (D.D.C. 2008).

12 The parties submit that good cause exists to permit amending Plaintiff's complaint.
13 Defendant Cathleen Jensen, was an involved party in Plaintiff's November 30, 2017 motor
14 vehicle collision. Plaintiff filed suit on September 6, 2019. Dkt. 1. Plaintiff attempted to
15 personally serve Defendant Jensen and was unsuccessful. *See* Affidavit of Jared D. Stueckle in
16 Support of Due Diligence. Dkts. 11-13. Unable to personally serve Defendant Jensen, Plaintiff
17 effected service via the Washington State Secretary of State. Dkt. 10, 14. Unbeknownst to the
18 Plaintiff, Ms. Jensen passed away on July 28, 2019¹.

19 Counsel for Plaintiff and United States was contacted by an attorney representing Ms.
20 Jensen estate, Ms. Debra Akhbari. *See*, Declaration of Jonathan J. Lee. Ms. Akhbari informed the
21 parties that she would be taking over representation of Ms. Jensen from Ms. Sara Sato and
22 verified that Ms. Jensen had in fact passed away. *Id.* In light of the new information, the parties
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27 ¹ <https://hillfhpuyallup.com/tribute/details/143861/Cathleen-Jensen/obituary.html>

1 agreed that prudence would dictate that Ms. Jensen should be properly substituted by Ms.
2 Jensen's estate. *Id.*

3 Probate for Ms. Jensen's estate was opened in Pierce County on June 17, 2020. Michael
4 Jensen, widow of the deceased defendant was appointed personal representative on June 26,
5 2020. *Id.*

6
7 Given the amendment of the discovery schedule and trial date, no parties will be
8 prejudiced by an amendment to include Ms. Jensen's estate. Based on the foregoing, the parties
9 agree to include the estate of Cathleen Jensen as a Co-defendant.

10 As Defendant Jensen's counsel has already appeared, aware of the pending motion, and is
11 also aware of the present court deadlines, a 14 day deadline to answer the amended complaint
12 would be prudent and adequate.

13 A proposed amended complaint is attached herein as Exhibit A.

14
15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16
17 DATED: July 10, 2020

s/Jonathan Lee
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22 DATED: July 10, 2020

s/Heather C. Costanzo
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America

ORDER

- 1) **Plaintiff may amend her complaint to include Defendant Michael Jensen, Administrator of Estate of Cathleen Jensen as a co-defendant and;**
- 2) **Defendant Jensen shall answer the amended complaint within 14 days of service.**

Dated this 13th day of July, 2020.



BENJAMIN H. SETTLE
United States District Judge